

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION**

**VICTOR HURNS**

**PETITIONER**

**v.**

**No. 2:97CV26-D-B**

**JAMES V. ANDERSON, ET AL.**

**RESPONDENTS**

**ORDER CONSTRUING MOTION AS SECOND OR SUCCESSIVE  
PETITION; TRANSFERRING CASE TO THE  
FIFTH CIRCUIT COURT OF APPEALS**

This matter comes before the court on the motion by the petitioner for relief from judgment, which the court will construe as a second or successive petition for a writ of *habeas corpus*. Victor Hurns was convicted for murder on June 1, 1990. On February 11, 1997, Hurns filed a petition for a writ of *habeas corpus* under 28 U.S.C. § 2254, and this court denied the petition on January 15, 1998. Hurns has since filed numerous requests to reopen the case – and has now filed a motion seeking relief from the court’s February 11, 2015, order [64] denying two motions [62], [63] to alter judgment. Though Mr. Hurns has layered his request behind motions to alter judgment, in substance, the instant request operates as a *third* motion for relief from judgment under Fed. R. Civ. P. 60(b) – in which he sets forth substantive claims for *habeas corpus* relief. The court must construe such a motion as a second or successive petition for a writ of *habeas corpus*. See *Gonzalez v. Crosby*, 545 U.S. 524, 532-532, 125 S.Ct. 2641 (2005). The Antiterrorism and Effective Death Penalty Act requires that, before a district court files a second or successive petition for a writ of *habeas corpus*, “the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).


The petitioner has not obtained such an order. Rather than dismissing the petition on this basis, the Fifth Circuit permits district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) and (b)(3)(C). *See In re Epps*, 127 F.3d 364, 365 (5<sup>th</sup> Cir. 1997). Therefore, in the interest of justice and judicial economy, it is **ORDERED**:

1) That this petition will be transferred to the Fifth Circuit Court of Appeals for the petitioner to seek leave to file this successive § 2254 petition;

2) That the Clerk of Court is **DIRECTED** to **TRANSFER** this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) and (b)(3)(c), and *In re Epps*, 127 F.3d at 365; and

3) This case is **CLOSED**.

**SO ORDERED**, this, the 10<sup>th</sup> day of December, 2018.

  
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SENIOR JUDGE